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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHARON ZIEROTH,)	Case Number: 3:20-cv-00172-MMC
)	
Plaintiff,)	NOTICE OF MOTION AND MOTION FOR
)	SUMMARY JUDGMENT
vs.)	
)	Hearing Date: February 28, 2020, 9:00am
ALEX AZAR, in his capacity as Secretary of)	Location: Courtroom 7, 19 th Fl., 450 Golden
the United States Department of Health and)	Gate Ave, San Francisco, CA
Human Services,)	Judge: Honorable Maxine Chesney
)	
Defendants.		

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 28, 2020 at 9:00am, pursuant to FED.R.CIV.P. 56, Plaintiff will move for summary judgment. This motion is based on the accompanying memorandum of points and authorities and the exhibits and declaration attached thereto.

Plaintiff respectfully requests that the Court enter an Order granting summary judgment that: 1) a continuous glucose monitor (CGM) is “primarily and customarily used to serve a medical purpose” and is, therefore, covered “durable medical equipment”; 2) a continuous glucose monitor is a “blood glucose monitor” within the meaning of 42 U.S.C. § 1395x(n) and is,

1 therefore, covered “durable medical equipment”; and 3) that CMS 1682-R, LCD L33822, and
2 Policy Article A52464 issued in violation of the notice and comment requirements of 42 U.S.C.
3 § 1395hh(a)(2) and are therefore invalid. Accordingly, Plaintiff asks the Court to further issue
4 an Order directing the Secretary to approve Ms. Zieroth’s claim.

5 A proposed Order accompanies this motion.

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8 Dated: January 15, 2020

Respectfully submitted,

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10 PARRISH LAW OFFICES

11 /s/ James C. Pistorino

12 James C. Pistorino

13 *Attorneys for Plaintiff*
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